IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Bail Appl..No. 7505 of 2007()

(IN CRIME NO.484/07 OF KADAKKAL POLICE STATION, KOLLAM DISTRICT)

PETITIONERS/ACCUSED 1 & 2:

1. **AMJIDSHA M., S/O. MUHAMMED BASHA, AGED 43, RESIDING AT MUBARAK MANZIL, KARUMTHALKADY, NILAMEL P.O., KOLLAM.**

2. **NOORJAHAN A., W/O. AMJIDSHA, AGED 35, RESIDING AT MUBARAK MANZIL, KARUMTHALKADY, NILAMEL P.O., KOLLAM.**

BY ADV. SRI.ABRAHAM P.GEORGE

RESPONDENT: COMPLAINANT:

STATE OF KERALA - REP. BY C.I. OF POLICE, KADAKKAL, KOLLAM DISTRICT, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R. BASANT, J.

B.A. No. 7505 OF 2007

Dated this the 17th day of December, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2 and they face allegations in a crime registered for offences punishable under Secs.420 and 409 read with Sec.34 of the IPC. The petitioners are spouses. The crux of the allegations against the petitioners is that they were running a finance establishment. The de facto complainant had pledged certain gold ornaments with the said finance establishment. The de facto complainant was willing to repay the amount; but the petitioners have closed the establishment and have started absconding. It is alleged that this is a case of cheating, breach of trust and misappropriation. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that

the petitioners are absolutely innocent. The finance establishment was being run by the 1st accused and the 2nd accused is the wife of the 1st accused. She is not in any way connected with the running of the establishment. She is neither a partner nor a joint proprietor. Allegations are being raised against her only in an attempt to coerce the petitioner to accept the unreasonable terms of the de facto complainant and others similarly placed. In any view of the matter, the 2nd petitioner – the wife of the 1st accused who has nothing to do with the running of the business, does not deserve to endure the trauma of arrest and detention. She may be granted anticipatory bail, it is prayed first of all.

3. Secondly, it is submitted that the 1st petitioner is absolutely innocent. It is submitted that he was running the establishment at some earlier point of time. But the contention is that the 1st petitioner had left it to his employees to continue the business. The obligation is on them to return the ornaments. The 1st petitioner, who is only a former proprietor, does not have any responsibility for the alleged misdeeds of those running the establishment now. In this view of the matter, the petitioners may be granted anticipatory bail. His former employees, the present proprietors of the finance establishment is playing fraud on the petitioners. The de facto complainant is put up by them

to make false allegations against the petitioners. Subject to any appropriate conditions, the petitioners may be granted anticipatory bail, it is prayed.

4. The learned Public Prosecutor opposes the application in so far as the 1st petitioner is concerned. The learned Public Prosecutor submits that in so far as the 2nd petitioner is concerned also, she has to be interrogated. The State has no objection in granting anticipatory bail to the 2nd petitioner, submits the learned Public Prosecutor. The 1st petitioner does not deserve to be granted anticipatory bail, submits the learned Public Prosecutor.

5. I have considered all the relevant inputs. At my request, the Case Diary has been placed before my by the learned Public Prosecutor. I have perused the same. Having considered all the relevant inputs, I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am not persuaded to agree that the 1st petitioner deserves to be granted anticipatory bail. I agree with the learned Public Prosecutor that there are no features in this case which would justify or warrant the invocation of the

extraordinary equitable discretion under Sec.438 of the Cr.P.C. in favour of the 1st petitioner. The defence urged by him that he had entrusted the business to his employees cannot, at the moment, be accepted straightaway to justify the issue of directions under Sec.438 of the Cr.P.C.

5. In the result, this bail application is allowed in part. This petition is dismissed in so far as the 1st petitioner is concerned with the observations that if the 1st petitioner surrenders before the learned Magistrate after giving sufficient prior notice to the Prosecutor in charge of the case the learned Magistrate must consider that application on merits and expeditiously.

6. This petition is allowed in far as the 2nd petitioner is concerned. Following directions are issued in her favour under Sec.438 of the Cr.P.C.

(i) The 2nd petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 24/12/07. She shall be released on regular bail on her executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The 2nd petitioner shall make herself available for interrogation before the Investigating Officer between 10 a.m. and 1 p.m. on 26/12/07 and thereafter as and when directed by

the Investigating Officer in writing to do so.

(iii) If the 2nd petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with her in accordance with law as if these directions were not issued at all;

(iv) If the 2nd petitioner were arrested prior to her surrender on 24/12/07 as directed in clause (i) above, she shall be released on her executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 24/12/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge